

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

ROBERT A CROW,

Petitioner,

v.

ALICE PAYNE,

Respondent.

Case No. C04-5775FDB

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
February 24<sup>th</sup>, 2006**

This 28 U.S.C. § 2254 petition for habeas corpus relief has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 (b) and local Rules MJR 3 and 4.

The petitioner attempted to file a 235 page long petition in this case. The court refused to allow filing of that petition and directed petitioner to file an amended petition. (Dkt. # 11). Petitioner had until January 17<sup>th</sup>, 2005 to file the amended petition. (Dkt. # 11). Petitioner was specifically warned that if no amended petition was received the court would recommend dismissal for failure to comply with a court order and failure to prosecute. (Dkt. # 11). Petitioner did not comply with the court's order and a Report and Recommendation to dismiss was entered. (Dkt. #

1 16). Petitioner objected and the District Court Judge gave the petitioner a deadline of May 27<sup>th</sup>,  
2 2005 to file an amended petition. (Dkt.. # 17 and 18). The case was re- referred at that point. (Dkt.  
3 # 18). Petitioner did not comply with the courts orders and appealed to the Ninth Circuit. (Dkt., #  
4 19). This case remained on appeal until August of 2005 when the Ninth Circuit dismissed the appeal.  
5 (Dkt. # 25 and 26). The order denying his appeal was returned as undeliverable on August 31<sup>st</sup>,  
6 2006. (Dkt. # 27). There has been no activity in the file since August of 2005.

7 The court recommends the petition be **DISMISSED WITH PREJUDICE** for failure to  
8 comply with court orders to amend. In the alternative the court recommends the action be  
9 **DISMISSED WITHOUT PREJUDICE** for failure to keep the court apprized of a current address  
10 as required by Local Rule 41 (b)(2). A proposed order accompanies this report and  
11 recommendation.

12 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the  
13 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.  
14 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
15 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
16 72(b), the clerk is directed to set the matter for consideration on **February 24<sup>th</sup>, 2006**, as noted in  
17 the caption.

18  
19 DATED this 1<sup>st</sup> day of February , 2006.  
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25 Karen L. Strombom  
26 United States Magistrate Judge  
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